



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200914069

DEC 8 12008

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Taxpayer SSN:
Control Number:

Legend:

Taxpayer	=
IRA A	=
Financial Institution B	=
Account C	=
Form D	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated May 7, 2008, as supplemented by correspondence dated June 24, 2008, in which you have applied for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from your individual retirement account (IRA A) maintained with Financial Institution B.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer, age 74 at the time of the distribution of Amount 1 from IRA A, asserts that his failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to an error by Financial Institution B. On May 7, , Amount 1 was transferred from Account C back to IRA A and was not used for any purpose. Taxpayer received a Form 1099-R for from Financial Institution B showing a taxable amount equal to Amount 2 (sum of Amount 1 plus Amount 1).

Taxpayer maintained IRA A, an individual retirement account under section 408(a) of the Code. On October 3, , Taxpayer withdrew Amount 1 from IRA A as a required minimum distribution under section 401(a)(9) of the Code for the taxable year. Taxpayer requested the distribution of Amount 1 using a form submitted to Financial Institution B on October 1, . Previously, Taxpayer had been receiving required minimum distributions pursuant to an automatic election on file with Financial Institution B. On November 15, , Taxpayer completed and mailed Form E to Financial Institution E requesting that the next annual automatic required minimum distributions be delayed until December, . However, on December 4, , Financial Institution E made a second distribution of Amount 1 to Taxpayer which was transferred directly to Account C, a non-IRA account. This second distribution was not discovered until after expiration of the 60-day rollover period of section 408(d)(3) of the Code.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in Code section 408(d)(3) with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the

portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was due to an error by Financial Institution B which failed to follow Taxpayer's written instructions to delay his next annual automatic required minimum distribution until December,

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA A. Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

200914069

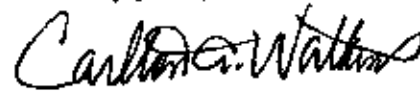
4

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact
(I.D. #), at ()

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter

Notice of Intention to Disclose, Notice 437